

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 825 OF 2005

WITH

NOTICE OF MOTION NO. 369 OF 2005

Ashok Agarwal

...Petitioner

Versus

Deputy Director of Enforcement, Mumbai, & Ors.
Respondents

...

Mr. Vikram Nankani instructed by Mr. Mathews Nedumpara
for the Petitioner

Mr. Y.R. Mishra for the Respondents.

CORAM: DALVEER BHANDARI, C.J., &
S.J. VAZIFDAR, J.

DATE: AUGUST 3, 2005.

P.C.:-

1. The petitioner is aggrieved by the order dated 29th November, 2004 passed by the Appellate Tribunal for Foreign Exchange, by which the petitioner has been directed to make pre-deposit of 40% of the amount of penalty.

2. The learned counsel for the petitioner submitted that the Tribunal, has not considered the *prima facie* case, financial hardship and balance of convenience of the petitioner. He submitted that the main accused have already been exonerated by the order dated 31st March, 2004 passed by the Tribunal. It is submitted that the role of the petitioner is only of abetment; and since the main accused have already been exonerated, the petitioner is quite hopeful that he would be successful in the appeal. The learned counsel appearing for the petitioner submitted that the Tribunal has not properly considered the financial hardship of the petitioner. The petitioner has given the details of the financial hardship, in which he has mentioned his Income Tax Returns for the assessment years of 2001-02, 2002-03 and 2003-04, his Chartered Accountants' certificate and bank statement, showing withdrawals, which has a total credit balance of Rs.5,442.53.

3. In this application, the petitioner has also mentioned that he does not have, on this date, any cash or anything else which could be easily

converted into liquid cash to make pre-deposit of the penalty amount.

4. On consideration of the totality of the facts and circumstances, in the interest of justice, we deem it appropriate to reduce the penalty amount of 40% to 20%, which the petitioner undertakes to pay within one week from today. We also direct the Tribunal to hear the appeal of the petitioner as expeditiously as possible, and in any event, within three months from today. Meanwhile, the attachment of the office premises shall continue. However, the respondents undertake not to auction the premises until the appeal is decided by the Tribunal.

5. Both the Writ Petition and Notice of Motion are accordingly disposed of.

CHIEF JUSTICE

S.J. VAZIFDAR, J.